REMARKS

This application claims priority as a continuation of U.S. Utility Patent Application Serial No. 09/378,820, filed on August 23, 1999, which is currently pending in the U.S. Patent Office. The claims filed in this continuation are as amended during prosecution of the parent case (with minor reformatting to claims 1 and 7 for added clarity), and have not been renumbered therefrom.

Allowed claims 1-6, 13-14

Applicants note that the Examiner indicated in an Action mailed 30 September 2003 in the parent case (09/378,820) that claims 1-6 and 13-14 were allowed. As such, these claims are believed to define patentable subject matter over the cited art.

Claims 7-12

Applicants note that the Examiner indicated in an Action mailed 30 September 2003 in the parent case (09/378,820) that claims 7-12 were rejected under §103 over Raith in view of Fried.

Applicant first notes that the present application has a filing date after 29 November 1999, and that the provisions of §103(c) that disqualify certain otherwise available art therefore apply to this application.

Applicant next notes that the invention of the present application was conceived not later than 26 July 1999 and constructively reduced to practice on or about 23 August 1999 (less than one month later). See the accompanying declarations of John W. Diachina and Gunnar Rydnell, the named inventors. Thus, the invention was conceived

of not later than 26 July 1999 and pursued with diligence until filing. According to MPEP §715.07, invention of the present application must be considered at having been invented not later than 26 July 1999 for purposes of determining if cited art qualifies as prior art.

Applicant next notes that the relied on Fried patent issued on 27 July 1999 based on an application apparently filed in 1997. Because Fried issued after the invention of the subject matter of the present application, Fried cannot qualify as prior art under §102(a). Further, because Fried issued less than one year before the effective filing date of this application (through priority claim), Fried cannot qualify as prior art under §102(b). Thus, the only apparent way (if any) that Fried can qualify as prior art is under §102(e). However, §103(c) disqualifies such §102(e) art for purposes of §103 rejections if the "subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person," 35 U.S.C. §103(c); *see also*, MPEP § 706.02(l).

The Fried patent appears on its face to be owned by Telefonaktiebolaget LM Ericsson of Sweden. As noted in the accompanying declarations, when the subject matter of the present application was conceived, and the application was filed, the inventors were under an obligation to assign the same to Ericsson Inc of North Carolina. Indeed, the parent application was assigned to Ericsson Inc. of North Carolina, *see* reel 010552, frame 0720 of the PTO assignment records. Based on information provided by Ericsson Inc., the undersigned understands that Ericsson Inc. is and was at all relevant times 100% owned by a holding company known as Ericsson Holding II Inc. (Delaware); and that Ericsson Holding II Inc. is and was at all relevant times 100% owned by

Telefonaktiebolaget LM Ericsson of Sweden. Thus, the owner of the present application, Ericsson Inc., is wholly owned subsidiary of Telefonaktiebolaget LM Ericsson of Sweden. As a wholly owned subsidiary, §103 and MPEP §706.02 prevents any patents owned by Telefonaktiebolaget LM Ericsson from being cited against an Ericsson Inc. application under §103, when the patents only qualify as prior art under §102(e)-(g).

In light of the above conception and company relationships, Applicant submits that the present application and the Fried patent were owned by the same "person," or under an obligation of assignment to the same "person," at the time of the invention of the subject matter of the present application. Accordingly, it is submitted that any §103 rejection based on Fried must fail.

As the only basis provided by the Examiner for rejecting claims 7-12 in the parent case is under §103 based at least in part on the now-disqualified Fried patent, Applicant submits that the claims 7-12 define patentable subject matter, and their allowance is requested.

If there are any outstanding issues, the Examiner is encouraged to **telephone** the undersigned so that they may be expeditiously resolved without further Action.

Respectfully submitted,
COATS & BENNETT, P.L.L.C.

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